

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY)	MDL NO. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
)	Subcategory Docket: 06-11337-PBS
)	
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
)	
<i>U.S. ex rel. Ven-A-Care of the Florida Keys,</i>)	Magistrate Judge Marianne B. Bowler
<i>Inc. v. Abbott Laboratories, Inc., No. 07-CV-</i>)	
<i>11618-PBS; U.S. ex rel. Ven-A-Care of the</i>)	
<i>Florida Keys, Inc. v. Dey, Inc. et al., No. 05-</i>)	
<i>11084-PBS; U.S. ex rel. Ven-a-Care of the</i>)	
<i>Florida Keys, Inc., et al. v. Boehringer</i>)	
<i>Ingelheim Corp., et al., No. 07-10248-PBS</i>)	

THE PARTIES' JOINTLY PROPOSED AGENDA FOR UPCOMING HEARINGS

Counsel for the Plaintiffs the United States of America and Relator Ven-A-Care of the Florida Keys, Inc. and Defendants Abbott Laboratories, Inc. ("Abbott"), Dey, Inc., Dey, L.P., and Dey L.P., Inc. (collectively, "Dey") and Boehringer Ingelheim Roxane, Inc. (f/k/a Roxane Laboratories, Inc.) ("Roxane") have conferred as to the agenda for upcoming hearings before this Court, which are scheduled for 2:00 p.m. on December 10, 11 and 16, 2009.¹

A. December 10 and 11, 2009 Hearings

The Court's October 20, 2009 electronic Order scheduled a *Daubert* hearing pertaining to Abbott's Motion *In Limine* to Exclude Certain Opinions Proffered by Plaintiffs' Expert Mark G. Duggan, Ph.D. for December 10, 2009 at 2:00 PM and December 11, 2009 at 2:00 PM. (*See* Dkt. Nos. 233 & 235 (Abbott motion); Dkt. No. 500 (Plaintiffs' opposition); Dkt. No. 521 (Abbott reply); Dkt. No. 538 (U.S. sur-reply).) Accordingly, the parties will be prepared to argue and present evidence for the *Daubert* hearing on December 10th and on December 11th. The parties

¹ Subsequently, the Court has scheduled a Final Settlement Conference in the Schering/Warrick matter for 3:00 p.m. on December 11, 2009.

anticipate the following expert witnesses will be present to testify on issues pertinent to Abbott's motion: Dr. Mark G. Duggan (expert for Plaintiffs); Dr. James W. Hughes (expert for Abbott); and Mr. Steven J. Young (expert for Abbott). It is Abbott's position that since it filed the *Daubert* challenge, it should question Dr. Duggan first. It is Plaintiffs' position that, as the proponent of the evidence, it should start the questioning of Dr. Duggan. The parties propose that the hearing begin with some initial argument from the parties.

If time permits following the *Daubert* hearing on December 10th and 11th (or if additional time should become available on those days) and the Court is inclined, the following additional motions are fully briefed and ripe for argument:

- *Defendants' Motions for Partial Summary Judgment (Common Issues)*
 - Dkt. Nos. 236 & 249 (Dey motion); Dkt. Nos. 241-42 (Abbott motion); Dkt. Nos. 256-57 (Roxane motion); Dkt. No. 305 (U.S. opposition on common issues); Dkt. No. 409 (Defendants' consolidated reply on common issues; Dkt. No. 459 (U.S. sur-reply on common issues)
- *Defendants' Motions for a Finding of Spoliation and for Sanctions*
 - Dkt. Nos. 218-20 (Abbott motion); Dkt. Nos. 222-24 (Dey motion); Dkt. No. 274-76 (Roxane motion); Dkt. No. 281 (U.S. opposition to Abbott/Dey); Dkt. Nos. 360-61, Abbott/Dey reply; Dkt. Nos. 370-71 (U.S. opposition to Roxane), Roxane Reply (Dkt. No. 495 & 503); Dkt. No. 6734 (U.S. sur-reply)

Thus, parties propose the following sequence:

December 10, 2009: *Daubert* hearing

December 11, 2009: *Daubert* hearing (continued, as needed) and/or Defendants' motions for partial summary judgment and Defendants' motions for a finding of spoliation and for sanctions

B. December 16, 2009 Hearing

(1) The parties also believe that Boehringer Ingelheim Corporation (BIC) and Boehringer Ingelheim Pharmaceutical's (BIC/BIPI's) should be heard first on December 16th:

- BIC and BIPI's Motion for Summary Judgment (Master Dkt. No. 6191, Subcategory Dkt. No. 246); BIC/BIPI Memo in Support of Motion for SJ (Master Dkt. No. 6192,

Subcategory Dkt. No. 247); Declaration (Master Dkt. No. 6193, Subcategory Dkt. No. 248); BIC/BIPI Statement of Facts (Master Dkt. No. 6195, Subcategory Dkt. No. 251); BIC/BIPI Corrected Statement of Facts (Master Dkt. No. 6214, Subcategory Dkt. No. 263); U.S. Opposition to BIC/BIPI SJ Motion (Master Dkt. No. 6410, Subcategory Dkt. No. 390); Fauci Declaration (Master Dkt. No. 6412-6413, Subcategory Dkt. No. 394, 397); Response to Corrected SOF (Master Dkt. No. 6411, Subcategory Dkt. No. 391); BIC/BIPI Reply Memo re Motion for SJ (Master Dkt. No. 6516, Subcategory Dkt. No. 456); BIC & BIPI's Reply to U.S.'s Response to BIC & BIPI's SOF re Summary Judgment (Master Dkt. No. 6517, Subcategory Dkt. No. 457); Reale Declaration (Master Dkt. No. 6522, Subcategory Dkt. No. 464); U.S.'s Sur-Reply to BIC and BIPI's Motion for Summary Judgment (Master Dkt. No. 6575, Subcategory Dkt. No. 483)

(2) The Court has also scheduled argument on the United States's motion to consolidate the Dey and Roxane cases on December 16th. (*See* Dkt. Nos. 491-92 (U.S. motion); Dkt. No. 518 (Roxane opposition); Dkt. No. 524 (Dey opposition); Dkt. No. 537 (U.S. reply). The parties propose that this motion be heard second on December 16.

Dated: December 7, 2009

/s/ R. Christopher Cook
James R. Daly
Eric P. Berlin
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585

R. Christopher Cook
David S. Torborg
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

/s/ Eric T. Gortner
Helen E. Witt, P.C.
Anne M. Sidrys, P.C.
Eric T. Gortner
John W. Reale (BBO # 654645)
KIRKLAND & ELLIS LLP
200 East Randolph Drive
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

Counsel for Defendants Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc.

/s/ Neil Merkl
Paul F. Doyle (BBO # 133460)
Sarah L. Reid
Neil Merkl
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, NY 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897

Counsel for Defendants Dey, Inc., Dey L.P, Inc. and Dey, L.P.

/s/ George Henderson
Joyce R. Branda
Daniel R. Anderson
George Henderson
Renée Brooker
Justin Draycott
Rebecca Ford
Civil Division
Commercial Litigation Branch
P. O. Box 261
Ben Franklin Station
Washington, D.C. 20044
Phone: (202) 305-9300
Fax: (202) 616-3085

Counsel for the United States of America

CERTIFICATE OF SERVICE

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 7th day of December 2009.

/s/ David S. Torborg_____